

JUDGE BENJAMIN H. SETTLE

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON AT TACOMA

PATRICIA POTTER and WILLIAM H.
POTTER, as a marital community,

Plaintiffs,

vs.

AMERICAN FAMILY INSURANCE,

Defendant.

NO. 3:16-cv-05406-BHS

**DECLARATION OF SOK-
KHIENG LIM IN OPPOSITION
TO AMERICAN FAMILY'S
MOTION FOR SUMMARY
JUDGMENT RE MEASURE OF
DAMAGES**

ORAL ARGUMENT REQUESTED

Hearing Date:
November 18, 2016

COMES NOW Sok-Khieng Lim, under penalty of perjury, and deposes and
testifies as follows:

1. I am one of the attorneys of record for Plaintiffs in this matter, I make this
declaration based upon personal knowledge, and I am competent to make the same.

2. On June 1, 2014, Plaintiff, Patricia Potter was a fault-free driver involved in
a high-speed motor vehicle collision with third-party driver Michael Bowlin, who was

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DAVIES PEARSON, P.C.
ATTORNEYS AT LAW
920 FAWCETT -- P.O. BOX 1657
TACOMA, WASHINGTON 98401
TELEPHONE (253) 620-1500
TOLL-FREE (800) 439-1112
FAX (253) 572-3052

1 intoxicated and uninsured. Mrs. Potter sustained severe injuries and damages as a result of
2 that collision, for which she sought treatment. Among other injuries, Mrs. Potter was
3 diagnosed with a closed head injury and post-concussion syndrome. Symptoms of and
4 treatment for these injuries are expected to continue into the future and may be permanent.
5 She also was laid off from her job, as her medical conditions prevented her from
6 performing her job duties. Mrs. Potter continues to suffer from debilitating symptoms
7 related to the accident.

8
9 3. At the time of the collision, Mrs. Potter and her husband had in effect a
10 valid policy of insurance issued by American Family Insurance ("American Family") which
11 included Uninsured Motorist ("UM") coverage for Mrs. Potter with a limit of \$100,000 per
12 person. The policy did not contain any Personal Injury Protection ("PIP") coverage or
13 benefits.

14 4. By letter dated June 16, 2014, attorney Ben Zielinski of my office, who
15 represented the Potters in their UM case, notified American Family of our office's
16 representation of Mrs. Potter for injuries related to the collision. Due to the severe nature
17 of Mrs. Potter's injuries, on June 15, 2015 Mr. Zielinski sent a policy limits demand to
18 American Family, which included all of her accident related medical records and billings.
19 Attached as Exhibit "A" is a true and correct copy of that letter, without attachments.
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1 5. On August 31, 2015, American Family rejected Mrs. Potter's policy limits
 2 demand via letter and offered \$41,701.19 to settle her claim, even though she had sustained
 3 a severe head injury from a high impact T-bone collision. Attached as Exhibit "B" is a true
 4 and correct copy of letter. Of note, as of that date American Family had not conducted
 5 any physical examination of Mrs. Potter or hired any medical doctor to perform a records
 6 review. Mr. Zielinski contacted American Family via telephone later that same day seeking
 7 the factual basis of rejecting Mrs. Potter's policy limits demand. American Family could
 8 not provide any specific reasoning for its decision.
 9

10 6. Because American Family refused to explain its low settlement offer and
 11 there was no evidence that they were willing to consider anything even close to a realistic
 12 settlement value, on August 31, 2015 Mrs. Potter was forced to request an arbitration
 13 hearing with American Family pursuant to the provisions of her UM automobile policy.
 14 Mrs. Potter had not wanted to pursue litigation, but at that point she had no other option.
 15

16 7. During the discovery proceedings, Mr. Zielinski repeatedly questioned
 17 American Family's counsel about the basis for not paying policy limits for a head injury
 18 such as the one that Mrs. Potter sustained. The only answers our office received was that
 19 American Family did not value this at policy limits and were not going to pay policy limits.
 20

21 8. On January 6, 2016, American Family offered to settle Mrs. Potter's claim
 22 for \$50,000 and threatened that if the plaintiffs did not accept this offer, then American
 23

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1 Family would continue to litigate the claim and depose plaintiffs' two treating physicians
 2 and schedule a defense medical exam, forcing plaintiffs to incur additional attorney's fees
 3 and costs. Attached as Exhibit "C" is a true and correct copy of an e-mail Mr. Zielinski
 4 received from American Family's counsel Michelle Menely documenting this conversation.
 5 As of that date, American Family still had not conducted any formal medical evaluation of
 6 Mrs. Potter before rejecting her policy limits demand.

7
 8 9. On January 8, 2016, Mr. Zielinski sent American Family a letter again
 9 questioning the valuation process of Mrs. Potter's UM claim and the basis to deny a policy
 10 limits demand. Attached as Exhibit "D" is a true and correct copy of this letter. At
 11 attached as Exhibit "E" is a true and correct copy of the letter dated January 11, 2016 that
 12 he received from American Family's counsel in response. In this letter, American Family
 13 expressly refused to provide any information about how it had valued its initial settlement
 14 offer, but it did confirm that American Family was going to schedule the depositions of
 15 Mrs. Potter's treating providers and arrange for a defense medical examination.

16
 17 10. On February 29, 2016, the parties participated in binding arbitration, and
 18 the plaintiffs were awarded \$130,259.41. American Family subsequently issued a check to
 19 plaintiffs in the amount of \$100,000.00, the policy limits. However, American Family did
 20 not issue a check for the full arbitration award and has refused to proffer any amount
 21
 22

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beyond the policy limits. It still has never provided any information to support its initial settlement offer or for forcing the Potters into litigation.

11. Attached as Exhibit “F” is a true and correct copy of the Order Granting in Part Plaintiff’s Motion for Summary Judgment and Certifying Question to State Supreme Court in the matter of *Morella v. Safeco Insurance Company*, WDWA at Seattle, No. C12-0672-RSL (2013).

12. Attached as Exhibit “G” is a true and correct copy of excerpts from the 2007 State of Washington Voters’ Pamphlet, including pages 3, 13-15, and 29-30.

13. Attached as Exhibit “H” is a true and correct copy of correspondence from Mr. Zielinski to American Family’s counsel dated January 25, 2016.

I CERTIFY UNDER PENALTY OF PERJURY UNDER THE LAWS OF THE STATE OF WASHINGTON THAT THE FOREGOING IS TRUE AND CORRECT.

SIGNED at Tacoma, WA this 14th day of November, 2016.

DAVIES PEARSON, P.C.

/s/ Sok-Khieng K. Lim
Sok-Khieng K. Lim, WSB#30607
Attorneys for Plaintiffs
Davies Pearson, P.C.
920 Fawcett Ave.
Tacoma, WA 98402
T: 253-620-1500 F: 253-572-3052
Email: slim@dpearson.com

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CERTIFICATE OF SERVICE

Pursuant to the United States District Court Electronic Case Filing rules, the undersigned certifies under penalty of perjury under the laws of the State of Washington, that on the 14th day of November 2016, the foregoing document was presented to the Clerk of the Court for filing and uploading to the United States District Court Western District of Washington Electronic Case Filing system.

In accordance with the Court's rules, the Clerk of the Court will send electronic notification of such filing to the following person(s):

Counsel for Defendant:

Rory W. Leid, III
Jenna R. Oates
COLE, WATHEN, LEID, HALL, PC
303 Battery Street
Seattle, WA 98121

Email addresses: rleid@cwlhlaw.com; croslaniec@cwlhlaw.com; jsherred@cwlhlaw.com; nreynolds@cwlhlaw.com; and sgunderson@cwlhlaw.com

DATED this 14th day of November, 2016.

DAVIES PEARSON, P.C.

/S/ Kathy Bates
Kathy Bates, Legal Assistant

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